

PAGA ONLY SETTLEMENT AGREEMENT

This settlement agreement ("Settlement") is made and entered into between Plaintiff Justino Medrano ("Plaintiff"), acting in his capacity as private attorney general, and Defendant F & F Contracting, Inc. ("Defendant").

I. DEFINITIONS

The following terms, when used in this Settlement, shall have the following meanings:

1. "The Action" means the matter entitled *Justino Medrano v. F & F Contracting, Inc., et al.*, filed in Madera County Superior, MCV 085748 on July 19, 2021, and the allegations as set forth in Plaintiff's correspondence to the California Labor and Workforce Development Agency, dated July 19, 2021 ("1st LWDA Notice"), and supplemental correspondence, dated January 18, 2022 ("2nd LWDA Notice") (Collectively the 1st LWDA Notice and 2nd LWDA Notice are referred to herein as the "LWDA Notices").
2. "Aggrieved Employees" consist of all F & F Contracting, Inc.'s non-exempt citrus employees who worked for F & F Contracting, Inc. in California at any time from July 19, 2020, to September 26, 2022.
3. "Defendant" means F & F Contracting, Inc.
4. "Court" means the Superior Court of California for the County of Madera.
5. "Effective Date" means the date upon which the Parties sign the Settlement Agreement.
6. "Individual Settlement Award" means the amount to be paid to each Aggrieved Employee based on the formula described herein.
7. "LWDA" means the California Labor and Workforce Development Agency.
8. "Maximum Settlement Amount" is a non-reversionary sum of One Hundred and Forty-Five Thousand Dollars and Zero Cents (\$145,000.00), which represents the total amount payable under this settlement by Defendant (subject to the Escalator Clause described below),

including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, and payment of Plaintiff's attorneys' fees and costs.

9. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts (subject to Courts approval) are subtracted from the Maximum Settlement Amount: (a) Plaintiff's attorneys' fees up to approximately thirty-five percent (35%) the Maximum Settlement Amount, currently estimated at \$50,750.00 and (b) Plaintiff's reasonable verified litigation costs up to \$11,000.

10. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2689, *et seq.*

11. "PAGA Period" means the time period between July 19, 2020, to September 26, 2022.

12. "PAGA Released Claims" means any and all PAGA claims that were pled in the operative complaint in the Action and the LWDA Notices.

13. "Parties" means Plaintiff and Defendant.

14. "Plaintiff" means Justino Medrano.

15. "Plaintiff's Counsel" means Daniel J. Brown of Stansbury Brown Law, PC.

II. RECITALS

1. Plaintiff alleges that Defendant failed to provide the Aggrieved Employees with compliant meal and rest periods or premium pay in lieu thereof, failed to pay all overtime and minimum wages, and consequently failed to pay all wages at separation of employment. Plaintiff also alleges that Defendant failed to provide compliant wage statements that accurately included all necessary information. Plaintiff also alleged that Defendant failed to reimburse Aggrieved Employees for necessary business expenses. Plaintiff alleges that Defendant is therefore liable for civil penalties under PAGA. Defendant denies these allegations. More specifically, Defendant alleges that it has robust policies regarding meal periods and rest periods and that it provided all legally required meal and rest periods pursuant to those policies; that it fully compensated

employees for all wages and premiums due; that employees were provide all tools and supplies necessary for the perform of their work duties; and that it provided employees with accurate and complete wage statements. In entering into this Settlement, Defendant does not admit to the sufficiency of any claims, allegations, assertions, or contentions made against it in the Action.

2. On July 19, 2021, Plaintiff provided a written notice of his intent to file a claim for civil penalties under PAGA to the LWDA and Defendant, alleging the Defendant violated a variety of California Labor Codes, as described in Section II.1. On January 18, 2022, Plaintiff provided supplemental written notice to the LWDA and Defendant of his allegation and redefined the scope of aggrieved employees to include all of Defendant's non-exempt employees in California.

3. On July 19, 2021, Plaintiff filed a class action complaint entitled *Justino Medrano v. F & F Contracting, Inc., et al.*, filed in Madera County Superior, MCV 085748, alleging causes of action for: (1) Minimum Wage Violations (2) Overtime Violations (3) Meal Period Violations; (4) Rest Period Violations; (5) Failure to Reimburse Necessary Business Expenses (6) Wage Statement Violations; (7) Waiting Time Penalties; and (8) Unfair Competition.

4. On January 12, 2022, Plaintiff amended his complaint to add a seventh cause of action for civil penalties under the Private Attorneys General Act.

5. Due to a binding arbitration agreement signed by Plaintiff, the Parties agree that as part of seeking approval of this PAGA only settlement, Plaintiff will request that the class claims in this Action be dismissed without prejudice.

6. The Parties agreed to participate in a full-day mediation with the Laurie Quigley Saldaña, Esq. (Ret) to take place on September 26, 2022 via "Zoom" videoconference. Plaintiff propounded formal discovery requests to Defendant in anticipation of the mediation pertaining to Plaintiff and the other aggrieved employees' time and pay records amongst other information and documents in order to allow for Plaintiff's counsel to investigate Plaintiff's allegations and value the PAGA claim.

7. On September 26, 2022, the Parties participated in a mediation with Ms. Saldaña, which concluded with a tentative settlement of Plaintiff's individual claims and PAGA claims.

III. OPERATIVE TERMS OF SETTLEMENT

The Parties agree as follows:

1. **Non-Admission:** Nothing in this Settlement shall be construed to be an admission by Plaintiff that his claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees, or any other person, and Defendant specifically disclaims any such liability or wrongdoing. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement and any related court documents or orders are not, and may not be, cited or admitted as evidence of liability.

2. **Maximum Settlement Amount:** Defendant shall pay One Hundred and Forty-Five Thousand Dollars and Zero Cents (\$145,000.00) as the non-reversionary Maximum Settlement Amount. Defendant will not pay more than the Maximum Settlement Amount (subject to the Escalator Clause below). Defendant shall bear responsibility for administration of the Settlement to the Aggrieved Employees.

3. **Escalator Clause:** Defendant represents that as of February 22, 2022, Aggrieved Employees worked combined 2,229 weekly pay periods during the PAGA Period. If the actual number of weekly pay periods worked during the PAGA Period is 7.5 percent (7.5%) more than the above number, Defendant shall increase the Maximum Settlement Amount on a pro-rata basis equal to the increase in the number of weekly pay periods above 7.5% (e.g., if the number of weekly pay periods increases by 25%, Defendant will increase the Maximum Settlement Amount by 17.5%).

4. **Net Settlement Amount:** The Parties agree that the following amounts should be subtracted from the Maximum Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

- a. **Plaintiff's Attorneys' Fees and Costs:** Defendant will not oppose Plaintiff's request for attorneys' fees in the amount up to approximately thirty-five percent

(35%) of the Maximum Settlement Amount (currently estimated to be \$50,750) and actual costs incurred in prosecuting this Action, up to \$11,000. In the event the Court approves a net payment less than these amounts, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). Defendant will report these payments on IRS Form 1099 issued to Plaintiff's Counsel.

5. **Allocation of Net Settlement Amount:** The Net Settlement Amount shall be distributed 75% to the LWDA and 25% to the Aggrieved Employees, pursuant to Labor Code § 2699(i). The 25% portion to be paid to Aggrieved Employees shall be paid to all Aggrieved Employees based on the proportionate number of weekly pay periods worked by each Aggrieved Employee during the PAGA period.

6. **PAGA Release:** Upon entry of an Order approving the Settlement and payment of the entire Maximum Settlement Amount, Plaintiff and the Aggrieved Employees will release any and all PAGA Released Claims against Defendant, its past or present officers, directors, and shareholders (collectively, the "Released Parties") based on the facts pled in the operative complaint and LWDA Notices that arose during the PAGA Period, including for violations of Labor Code §§ 201-203, 226(a), 226.7, 510, 512, 516, 558, 1174, 1194, 1198, 2802, 2804, and 2698 *et seq.* ("PAGA Released Claims"). Upon entry of the Order approving the settlement and judgement entered thereon and conditioned on full payment of the Maximum Settlement Amount, Plaintiff and the Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

7. **Releases Effective Upon Full Payment:** The Releases identified in Paragraph 6 will become effective upon full payment of the Maximum Settlement Amount pursuant to section IV of this Settlement.

8. **Dismissal of Class Action Claims:** Because Plaintiff signed a binding arbitration agreement and class action waiver, the Parties agree that Plaintiff will seek to dismiss the class action allegations without prejudice.

9. **Covenants and Representation by Plaintiff:**

- a. Plaintiff represents and warrants that he has not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement.
- b. Plaintiff acknowledges that he has read this Settlement, that he fully understands his rights, privileges and duties under the Settlement, and enters into this Settlement freely and voluntarily. Plaintiff further acknowledges that he had the opportunity to consult with his attorneys to explain the terms of the Settlement and the consequences of signing this Settlement.

10. **Judgement:** As part of the Motion to approve the Settlement, Plaintiff shall submit a proposed order and judgment which enters judgement in the Action in accordance with the terms of the Settlement and which retains jurisdiction of the Court over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement. This Settlement is expressly conditioned upon the Court entering an order as set forth herein. The order will not release or bar any claims other than the PAGA Released Claims as to Aggrieved Employees. The Court's entry of judgment shall not be deemed a finding against or an admission by Defendant of any liability. The Parties agree to reasonably cooperate in preparing any other filings required by the Court for approval of this Settlement.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator:** The Parties agree that Defendant will internally handle the administration of the Settlement.

2. **Provision of Information for Aggrieved Employees:** The person(s) in charge of administering the Settlement for Defendant ("Settlement Administrator") shall provide counsel for both Parties an anonymized spreadsheet containing the Individual Settlement Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel for the Parties of the calculations before mailing Individual Settlement Payments.

3. **Explanatory Letter and Individual Settlement Payments:**

No later than thirty (30) days after Court approval of the Settlement, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, in English and Spanish, along with the Individual Settlement Payments to all Aggrieved Employees via First-Class U.S. Mail. Each Individual Settlement Payment shall be deemed penalties and reported using IRS Form 1099.

Checks will remain negotiable for one hundred eighty (180) days from the date they are mailed by the Settlement Administrator. Any check that is not negotiated within one hundred eighty (180) days of mailing to an Aggrieved Employee shall be transferred to the Boys & Girls Clubs of Fresno County.

4. **Undeliverable Notices:** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any Checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a Skip-Trace or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will perform a single re-mailing.

Defendant fully discharges its obligations to those Aggrieved Employees to whom it will pay an Individual Settlement Payment through the Settlement Administrator's initial mailing of a

check, regardless of whether such checks are actually received and/or negotiated by Aggrieved Employees.

5. **Payment of Remainder:** No later than thirty (30) days after Court approval of the Settlement, the Settlement Administrator will distribute the following additional payments: (1) the 75% share of the Net Settlement Fund to the LWDA; and (2) Court-approved attorneys' fees and costs to Plaintiff's Counsel.

6. **Accounting:** Within twenty-one (21) business days following the initial mailing of the Individual Settlement Awards, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the Settlement.

7. **Tax Consequences:** Neither Plaintiff nor Defendant, no counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement.

V. **MISCELLANEOUS PROVISIONS**

1. **Successors:** This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

2. **Costs and Fees:** The Parties shall bear their own costs, attorneys' fees, mediator fees and other fees incurred in connection with this Settlement, the Action and Plaintiff's claims, except as otherwise set forth specifically herein.

3. **Governing Law:** This Settlement shall be construed under and governed by the laws of the State of California. Any questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement, it shall be brought in the State of California, County of Tulare.

4. **Nullification of Settlement:** In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason,

then this Settlement and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

5. **Judgement and Continued Jurisdiction:** After approval of this Settlement, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms of the Settlement; (ii) settlement administration matters; and (iii) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement.

6. **Amendment or Modification:** This Settlement may be amended or modified only by written instrument, signed by the Parties or their successors-in-interest or counsel for the Parties subject to Court approval.

7. **Authorization to Enter into Settlement:** Counsel for the Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. If they are unable to reach agreement on the form or content on any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

8. **Execution and Counterparts:** This Settlement is subject only to the execution of the Parties. However, the Settlement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument.

9. **Acknowledgement that the Settlement is Fair and Reasonable:** The Parties believe this settlement is a fair, adequate and reasonable settlement of the Action, and have arrived at this Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an

opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

10. **Waiver:** No waiver of any condition or covenant contained in this Settlement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right or remedy.

11. **Enforcement of Action:** The Parties agree that the Madera County Superior Court shall have jurisdiction to enforce this Settlement pursuant to California Code of Civil Procedure Section 664.6. In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

12. **Mutual Preparation:** The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement. Accordingly, this Settlement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one or more of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement.

13. **Representation by Counsel:** The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement, and this Settlement has been executed with the consent and advice of counsel and reviewed in full.

14. **Cooperation and Execution of Necessary Documents:** The Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement. The Parties agree to work cooperatively, diligently, and in good faith to ensure that all documents necessary to seek the Court's approval of this Agreement are timely filed.

15. **Binding Agreement:** The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement will be fully enforceable and binding on all Parties and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that might apply under federal or state law.

IN WITNESS THEREOF, the Parties to this Settlement each acknowledge that they have read the foregoing Settlement, accept and agree to the provisions contained in this Settlement and hereby execute it voluntarily and with full understanding of its consequences.

J. 7
NOVEMBER
Dated: ~~September~~ 7, 2022

Justino Medrano

Justino Medrano
Justino Medrano, Plaintiff

November 7, 2022
Dated: September __, 2022

Stansbury Brown Law, PC

[Signature]
Daniel J. Brown, Esq.
Attorney for Plaintiff

November 14
Dated: ~~September~~ __, 2022

Raimondo Miller, ALC

[Signature]
James D. Miller, Esq.
Kevin B. Piercy, Esq.
Attorneys for Defendant

Dated: September __, 2022

F & F Contracting, Inc.

[Signature]
By: _____
Its: _____

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MADERA**

JUSTINO MEDRANO, as an individual
and on behalf of all others similarly
situated,

Plaintiff,

vs.

F & F CONTRACTING, INC., a California
corporation; WONDERFUL CITRUS,
LLC, a Delaware limited liability
company; WONDERFUL CITRUS II,
LLC, a Delaware limited liability
company; WONDERFUL CITRUS
PACKING, LLC, a Delaware Limited
Liability Company; WONDERFUL
CITRUS COOPERATIVE, a California
corporation; WONDERFUL CITRUS
HOLDINGS, LLC, a Delaware limited
liability company; WONDERFUL
CITRUS VENTURES, LLC, a Delaware
limited liability company; and DOES 1
through 100,

Defendants.

Case No. MCV085748

**NOTICE OF SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIM
(CAL. LABOR CODE § 2698 *ET SEQ.*)**

You have been identified as a current or former non-exempt citrus employee of Defendant F & F Contracting, Inc. ("Defendant") ("Aggrieved Employee") who worked for Defendant from July 19, 2020, through September 26, 2022 ("PAGA Period").

On July 19, 2021, Plaintiff Justino Medrano ("Plaintiff") filed a lawsuit against Defendant. As amended, Plaintiff's lawsuit seeks to recover civil penalties for Defendant's alleged failure to pay all wages during employment and upon separation of employment, failure to maintain accurate records, failure to provide proper meal and rest periods, failure to timely pay all wages, failure to reimburse necessary business expenses, and failure to issue accurate and complete wage statements to Aggrieved Employees (the "Action").

Defendant denies Plaintiff's allegations in the Action and disputes all of Plaintiff's claims.

Plaintiff and Defendant reached a settlement of the claims for PAGA civil penalties alleged in the Action. The Court approved the settlement on <<<<<DATE OF PAGA APPROVAL>>>>>. The payment which accompanies this notice is made to you pursuant to the terms of the Settlement.

The Court-approved settlement contains the following release of claims, to which you are bound:

Upon entry of an Order approving the Settlement and payment of the entire Maximum Settlement Amount, Plaintiff and the Aggrieved Employees will release any and all PAGA Released Claims against Defendant, its past or present officers, directors, and shareholders (collectively, the "Released Parties") based on the facts pled in the operative complaint and LWDA Notices that arose during the PAGA Period, including for violations of Labor Code §§ 201-203, 226(a), 226.7, 510, 512, 516, 558, 1174, 1194, 1198, 2802, 2804, and 2698 *et seq.* ("PAGA Released Claims"). Upon entry of the Order approving the settlement and judgement entered thereon and conditioned on full payment of the Maximum Settlement Amount, Plaintiff and the Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

If you have any questions, you may contact either Plaintiff's Counsel or Defendant's Counsel.

Plaintiff's Counsel's contact information: Daniel J. Brown, Esq. Stansbury Brown Law, PC, 2610 ½ Abbot Kinney Blvd., Venice, CA 90291, (323) 204-3124

Defendant's Counsel's contact information: James D. Miller, Esq. and Kevin B. Piercy, Esq., of Raimondo Miller ALC, P.O. Box 28100, Fresno, CA 93729, (559) 432-3000.